

*United States Court of Appeals  
for the Second Circuit*



**APPELLANT'S  
APPENDIX**



**75-7412**

**United States Court of Appeals**

For the Second Circuit.

SYLVIA SACKS and BENJAMIN M. SACKS, individually as joint tenants, DONALD W. HAGELE, individually and as representatives and Class Members of Stockholders of INTERSTATE STORES, INC. who purchased their shares subsequent to Christmas 1973, ROBERT G. MORRIS, individually, ROBERT G. MORRIS, MARIKAY MORRIS and J. BRECK TOSTEVIN, as Trustees for ROBERT G. MORRIS DDS INC. EMPLOYEES PENSION TRUST, BABETTE KENT, individually, JEROME KENT and BABETTE KENT as joint tenants, JEROME KENT, individually, and MORRIS L. JANOVITZ, individually and as representatives and Class Members of Bondholders of INTERSTATE STORES, INC. who purchased their bonds subsequent to Christmas 1973, and in behalf of all other persons similarly situated and circumsanced,

Plaintiffs-Appellants,

-against-

INTERSTATE STORES, INC., MERSHULAM R'KLIS, CHARLES P. LAZARUS, ALBERT PARKER, SAM J. ABEND, WALTER A. CRAIG, SAMUEL HAUSMAN, M. LESTER MENDELL, EDWARD C. SCHENKEL, HAROLD J. SZOLD, ROBERT C. VAN TUYL, and "JOHN DOE" and "RICHARD ROE", the names "JOHN DOE" and "RICHARD ROE" being fictitious, the parties intended being those individuals, firms, corporations and associations who obtained material non-public information to the effect that in Christmas 1973 the said INTERSTATE STORES, INC. was "devoid of credit" and who either utilized this information for its own account or transmitted it to third parties who utilized this information for their own account,

Defendants-Appellees.

*On Appeal From The United States District  
Court For The Eastern District Of New York*

**APPELLANTS' APPENDIX**

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PAGINATION AS IN ORIGINAL COPY

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34C 880

DOCKET

## APPEAL

BRÜCHHAUSEN

ATTORNEYS

SYLVIA SACKS and BENJAMIN M. SACKS, individually as joint tenants, DONALD W. HAGELE, individually and as representatives and Class Members of Stockholders of INTERSTATE STORES, INC. who purchased their shares subsequent to Christmas 1973, ROBERT G. MORRIS, individually, ROBERT G. MORRIS, MARIKAY MORRIS and J. BRECK TOSTEVIN, as Trustees for ROBERT G. MORRIS DDS INC. EMPLOYEES PENSION TRUST, BABETTE KENT, individually, JEROME KENT and BABETTE KENT as joint tenants, JEROME KENT, individually, and MORRIS L. JANOVITZ, individually and as representatives and Class Members of Bondholders of INTERSTATE STORES, INC. who purchased their bonds subsequent to Christmas 1973, and in behalf of all other persons similarly situated and circumstanced,

**Plaintiffs,**

-against-

~~INTERSTATE STORES, INC., SOL W. CANTOR,  
S. O. LEIDESDORF & CO., a partnership, MERSHULAM  
RIKLIS, HERBERT B. SIEGEL, CHARLES P. LAZARUS,  
ALBERT PARKER, SAM J. ABEND, WALTER A. CRAIG,  
SAMUEL HAUSMAN, M. LESTER MENDELL, EDWARD C.  
SCHENKEL, HAROLD J. SZOLD, ROBERT C. VAN TUYL,  
and "JOHN DOE" and "RICHARD ROE", the names  
"JOHN DOE" and "RICHARD ROE" being fictitious,  
the parties intended being those individuals,  
firms, corporations and associations who obtained  
material non-public information to the effect  
that in Christmas 1973 the said INTERSTATE  
STORES, INC. was "devoid of credit" and who  
either utilized this information for its own  
account or transmitted it to third parties who  
utilized this information for their own account,~~

## **Defendants**

**REMARKS, ETC.**

1

74C 880

INDEPENDENT INVESTOR PROTECTIVE LEAGUE et al  
- vs. -  
INTERSTATE STORES, INC. et al

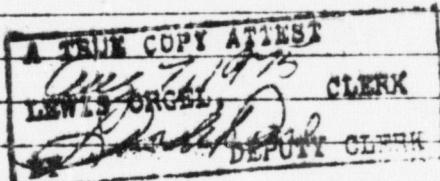
DATE	FILINGS- PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS	
		1	JS5
7-74	Complaint filed. Summons issued.	1	JS5
21-74	Copy of letter from Joel I. Sapernik dtd 6-19-74 filed.	2	
7-74	Summons returned and filed/executed.	3	
12-74	By BRUCHHAUSEN, J. - Order dtd. 7-10-74 extending time for deft, Leidesdorf & Co. to answer to 7-29-74 filed	4	
7/74	By BRUCHHAUSEN, J. - Order dated 7/13/74 filed that the time for the deft to answer the complaint is extended to Sept. 9, 1974	5	
1-74	By BRUCHHAUSEN, J. - Order dtd. 7-16-74 extending time for deft, Sol W. Cantor to answer to 10-1-74 filed.	6	
4-74	By BRUCHHAUSEN, J. - Order dtd. 8-12-74 extending time for deft, S.D. Leidesdorf & co to answer to 10-1-74 filed	7	
7/74	By BRUCHHAUSEN, J. - Order dated 9/11/74 filed that the time for the deft to answer the complaint is extended to 9/30/74 (deft The Bank of New York)	8	
74	By BRUCHHAUSEN, J. - Order dated 10/1/74 filed that the time for the deft to answer the complaint is extended to Nov. 15, 1974 (Sol Cantor)	9	
74	By BRUCHHAUSEN, J. - Order dated Oct. 7, 1974 filed that the time for the deft to answer the complaint is extended to Oct. 30, 1974 (The Bank of New York).	10	
74	By BRUCHHAUSEN-Order dated 10-7-74 extending time of deft. S.D. Leidesorf & Co. to answer complaint to 10-15-74 filed.	11	
74	ANSWER of S.D.Leidesdorf & Co. filed	12	
74	Pltff's interrogatories to defts filed.	13-15	
	Notice of Motion, ret. 11/15/74 filed re: to dismiss the com- plaint, etc.	16	
	Memorandum of deft The Bank of New York in Support of its motion to dismiss the complaint filed.	17	
74	Before BRUCHHAUSEN, J. - Case called- Action dismissed by stipu- lation -Judgment signed		
74	By BRUCHHAUSEN, J. - Order dtd 11-15-74 directing Clerk to enter judgment dismissing complaint as against deft The Bank of New York filed.	18	
	JUDGMENT dtd 11-18-74 entered in favor of deft The Bank of New York and against the pltffs filed. (p/c mailed to attys)	19	
	Answers and objections to pltff's first interrogatories to deft S.D. Leidesdorf & Co. filed. 2	20	

## CIVIL DOCKET 74-C-880 IND. INVESTOR PROT. LEAGUE VS. INTERSTATE STORES, INC.

DATE	FILINGS-PROCEEDINGS	COURT FEES		AMOUNT REPORTED REBILLED RETURNED
		PLAINTIFF	DEFENDANT	
11/26/74	By BRUCHHAUSEN, J. - Order dated 11/26/74 filed that the time of the deft Sol W. Cantor to answer the pltff's interrogatories is extended to ten days after the determination of the said deft's motion to dismiss the complaint, etc.			21
11/27/74	Notice of Motion, ret. 12/6/74 filed re: dismissing the Independent Investor Protective League as a pltff, etc.			22
11/27/74	Memorandum of Law in Support of Motion to Dismiss on Behalf of Deft Sol W. Cantor filed.			23
12/5/74	Amended Complaint filed.			24
1-3-75	Before BRUCHHAUSEN, J. - Withdrawn			
1-6-75	By BRUCHHAUSEN, J. - Order dtd extending time for defts Sol Canter and S.D. Leidesdorf & Co. to Jan. 31, 1975 filed.			25
2/5/75	Notice of Motion, ret. 2/11/75 filed re: to dismiss			26
2/5/75	Memorandum in Support of the motion of deft S.D. Leidesdorf & Co. to dismiss the amended complaint filed.			27
2/5/75	Affidavit of Service on above motion and memorandum filed.			28
2/5/75	Notice of Motion, ret. 2/11/75 filed re: to dismiss the amended complaint, etc.			29
2/5/75	Memorandum of Law in Support of Motion to Dismiss on Behalf of deft Sol W. Cantor filed.			30
3-10-75	By BRUCHHAUSEN, J. --Order dtd 3-10-75 dismissing the complaint as against deft S.D. Leidesdorf & Co. with prejudice. <del>XXXXXXXXXXXXXX</del> <del>XXXXXXXXXXXXXX</del> filed 3-10-75			31
3-27-75	By BRUCHHAUSEN, J. - Stipulation dtd 3-27-75 extending time for deft Herbert B. Siegal to answer amended complaint to 4-9-75 filed.			32
4-13-75	By BRUCHHAUSEN, J. - Stipulation dtd 4-17-75 extending time for Herbert B. Siegel to answer the amended complaint to 4-22-75 filed.			33
5-1-75	Notice of motion to dismiss amended complaint, ret 5-20-75 at 10 A.M. filed.			34
6/4/75	Affidavit of I. Walton Bader in Opposition to Motion to Dismiss filed.			35
6/4/75	Memorandum in Opposition to Motion to Dismiss Complaint and for the Posting of a Bond for Costs filed.			36
6/20/75	Before BRUCHHAUSEN, J. - Case called- Decision reserved.			

(cont.)

DATE	FILING & PROCEEDINGS	CLERK'S FEES		AMOUNT REPORTED IN ENCLOSURE RETURNING
		PLAINTIFF	DEFENDANT	
7-24-75	By BRUCHHAUSEN, J. Memorandum dtd 7-23-75 granting defts motion to dismiss the amended complaint filed. (p/c mailed)			37
7-3-75	By BRUCHHAUSEN, J. Order dtd 7-2-75 that the motion to dismiss this action because the amended complaint fails to state a claim upon which relief can be granted, and that this action is dismissed with prejudice, and that defts Herbert B. Siegel and Sol W. Cantor recover their costs filed. (p/c mailed to attys)			38
7-8-75	Notice of appeal filed. Duplicate mailed to C of A & attys. jn			39
7-8-75	Bond undertaking on appeal filed.			40
1/23/75	Certified copy of Order from the C. of A. that the record on Appeal be filed by Aug. 18, 1975 filed.			41
7-75	Above record certified and mailed to C of A. Acknowledgment for receipt of record requested.			---



FILED  
IN CLERK'S OFFICE  
U. S. DISTRICT COURT E.D. N.Y.

★ OCT 25 1974 ★

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

TIME A.M. \_\_\_\_\_  
P.M. \_\_\_\_\_

-----X  
INDEPENDENT INVESTOR PROTECTIVE LEAGUE, : 74 CIVIL 880  
ET AL., : JUDGE BRUCHAUSEN  
Plaintiffs, :  
-against- :  
INTERSTATE STORES, INC., ET AL., :  
Defendants, :  
-----X

FIRST INTERROGATORIES TO DEFENDANT  
SOL W. CANTOR

The following Interrogatories are submitted to the Defendant SOL W. CANTOR, to be answered fully and completely under oath within thirty days from the date of the service of these interrogatories upon you. The Interrogatories are, as follows:

1. Did the Defendant SOL W. CANTOR make any public announcement that in December 1973 the trade credit of the Defendant INTERSTATE STORES, INC. was cut off.
2. If the Answer to Interrogatory "1" is in the affirmative, set forth the details of such announcement.
3. Did the Defendant SOL W. CANTOR inform the Defendant MESHULAM RIKLIS that the trade credit of the Defendant INTERSTATE STORES, INC. was cut off in December 1973.

4. If the Answer to Interrogatory "3" is in the affirmative, please set forth the details of such information and the manner in which it was given.

5. Did the Defendant SOL W. CANTOR sell any stock, bonds or other security of INTERSTATE STORES, INC. from December 1973 to May 1974.

6. If the Answer to Interrogatory "5" is in the affirmative, please set forth, with respect to each of such sale, the number of shares involved, the number of bonds involved, the sale price and the date of such sale.

7. Did any firm, corporation, trust or association controlled by the Defendant SOL W. CANTOR sell any stock or bonds of INTERSTATE STORES, INC. between December 1973 and May 1974.

8. If the Answer to Interrogatory "7" is in the affirmative, set forth, with respect to each of such sale, the date thereof, the amount received for such stock or bonds and the number of shares of stock involved or the face amount of said bonds involved.

Dated: October 23, 1974

Yours, etc.

BADER and BADER  
Attorneys for Plaintiffs

By: Wade Bader

I. Walton Bader  
274 Madison Avenue  
New York, N.Y. 10018  
Telephone: (212) LE 2-6860

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

SYLVIA SACKS and BENJAMIN M. SACKS, individually  
as joint tenants, DONALD W. HAGELE,  
individually and as representatives and Class  
Members of Stockholders of INTERSTATE STORES, INC.  
who purchased their shares subsequent to  
Christmas 1973, ROBERT G. MORRIS, individually,  
ROBERT G. MORRIS, MARIKAY MORRIS and  
J. BRECK TOSTEVIN, as Trustees for  
ROBERT G. MORRIS DDS INC. EMPLOYEES PENSION  
TRUST, BABETTE KENT, individually, JEROME KENT and  
BABETTE KENT as joint tenants, JEROME KENT,  
individually, and MORRIS L. JANOVITZ,  
individually and as representatives and Class  
Members of Bondholders of INTERSTATE STORES, INC.  
who purchased their bonds subsequent to  
Christmas 1973, and in behalf of all other persons  
similarly situated and circumstanced,

CIVIL ACTION  
74 CIV 880

JUDGE  
BRUCHHAUSEN

AMENDED  
COMPLAINT

Plaintiffs,

-against-

INTERSTATE STORES, INC., SOL W. CANTOR,  
S.D. LEIDESDORF & CO., a partnership, MERSHULAM  
RIKLIS, HERBERT B. SIEGEL, CHARLES P. LAZARUS,  
ALBERT PARKER, SAM J. ABEND, WALTER A. CRAIG,  
SAMUEL HAUSMAN, M. LESTER MENDELL, EDWARD C.  
SCHENKEL, HAROLD J. SZOLD, ROBERT C. VAN TUYL,  
and "JOHN DOE" and "RICHARD ROE", the names  
"JOHN DOE" and "RICHARD ROE" being fictitious,  
the parties intended being those individuals,  
firms, corporations and associations who obtained  
material non-public information to the effect  
that in Christmas 1973 the said INTERSTATE  
STORES, INC. was "devoid of credit" and who  
either utilized this information for its own  
account or transmitted it to third parties who  
utilized this information for their own account,

Defendants

(24)

AMENDED COMPLAINT

COUNT ONE

Plaintiffs, for their Amended Complaint herein,  
respectfully shows to this Court and alleges:

1. Plaintiffs SYLVIA SACKS and BENJAMIN M.  
SACKS are Citizens and residents of the State of Florida  
having a residence at 2628 Dudley Drive East, Palm Beach,  
Florida.

2. Plaintiff DONALD W. HAGELE is a Citizen  
and resident of the State of Illinois, residing at 1810 S.  
Elmwood Avenue, Berwyn, Illinois.

3. Plaintiff ROBERT G. MORRIS is a citizen  
and resident of the State of California, residing at Carmel,  
California.

4. ROBERT G. MORRIS DDS, INC. EMPLOYEES  
PENSION TRUST is a Trust located at Carmel, California.

5. Plaintiffs JEROME KENT, BABETTE KENT and  
MORRIS L. JANOVITZ are Citizens and residents of the State  
of Florida.

6. The Plaintiffs have purchased and sold  
securities of the Defendant INTERSTATE STORES, INC., as follows:

NAME OF PLAINTIFF	SECURITY PURCHASED	DATE OF PURCHASE	PURCHASE PRICE
BENJAMIN M. SACKS and SYLVIA R. SACKS as joint tenants	500 shares common stock INTERSTATE STORES, INC.	May 16, 1974	\$3/8 per share

NAME OF PLAINTIFF	SECURITY PURCHASED	DATE OF PURCHASE	PURCHASE PRICE
BENJAMIN M. SACKS and SYLVIA R. SACKS as joint tenants	500 shares common stock INTERSTATE STORES, INC.	April 4, 1974	\$1 1/4 per share
DONALD W. HAGELE	2000 shares common stock INTERSTATE STORES, INC.	Feb. 20, 1974	\$2 1/2 per share
DONALD W. HAGELE	5000 shares common stock INTERSTATE STORES, INC.	March 19, 1974	\$2 per share
DONALD W. HAGELE	5000 shares common stock INTERSTATE STORES, INC.	April 3, 1974	\$1 3/4 per share
DONALD W. HAGELE	300 shares common stock INTERSTATE STORES, INC.	Jan. 30, 1974	\$2 7/8 per share
DONALD W. HAGELE	2000 shares common stock INTERSTATE STORES, INC.	May 23, 1974	\$10/32
DONALD W. HAGELE	5000 shares common stock INTERSTATE STORES, INC.	April 23, 1974	\$1 7/8
DONALD W. HAGELE	5000 shares common stock INTERSTATE STORES, INC.	May 23, 1974	\$10/32

7. This Count arises under the Securities Exchange Act of 1934 and this Court requires jurisdiction pursuant to Section 27 thereof (15 USC 78aa).

8. The specific sections of the Securities Exchange Act of 1934 claimed to be violated by the Defendants are Sections 9, 10(b), 13, 18, 20 and 15 (15 USC 78l, 15 USC 78j(b), 15 USC 78m, 15 USC 78r, 15 USC 78t and 15 USC 78o). The Defendants have also violated the applicable Rules and Regulations of the SEC applicable to the matters involved herein, and in particular Rule 10b-5 and Items 6, 4 and 13 of the Rules and Regulations of the SEC relating to the filing of Form 8-K.

9. The Defendant S. B. LEIDESDORF & CO. is, on information and belief, a partnership having an office and place of business at 125 Park Avenue, New York, N. Y. This Defendant had knowledge of the acts involved herein but failed to make the appropriate disclosure, all to the damage of the Plaintiffs SACKS and the Class that they represent.

10. Defendant INTERSTATE STORES, INC. is, on information and belief, a corporation duly organized and existing under the Laws of the State of Delaware having its office and principal place of business at 111 Eighth Avenue, New York, N. Y. 10011. This Defendant is in Chapter X proceedings under the Bankruptcy Act. A stay of all actions has

been entered by the Bankruptcy Court. However, this Corporation is made a Defendant to avoid the running of the Statute of Limitations against any claims that the Plaintiffs and the Classes that they represent may have.

11. Defendant SOL W. CANTOR was, at the time of the acts alleged herein, Chairman of the Board of Directors of the Defendant INTERSTATE STORES, INC. and was a "controlling person" as defined by the Securities Acts. Defendant CANTOR was, and still is, a resident of the Eastern District of New York.

12. Defendants SIEGEL, LAZARUS, PARKER, ABEND, CRAIG, HAUSHMAN, MENDELL, SCHENKEL, SZOLD, and VAN TUYL were, and still are, directors of the Defendant INTERSTATE STORES INC, and are "controlling persons" as defined by the Securities Acts.

13. The securities involved in this suit are the Common Stock of the said INTERSTATE STORES, INC, and the series of 4% SUBORDINATED CONVERTIBLE DEBENTURES of INTERSTATE STORES, INC. These are "securities" as set forth in the Securities Acts of the United States.

14. The securities involved herein have been sold in interstate commerce and through the medium of the mails and are subject to the provisions of the Securities Acts of the United States.

to make the material non-public information with respect to loss of trade credit generally known to the public, did make such information known to various favored individuals, firms, corporations, associations and trusts. These parties then sold their holdings of INTERSTATE STORES, INC. stocks and bonds to the unsuspecting members of the public including the Plaintiffs herein.

20. On information and belief, subsequent to December 1973, the Defendant RIKLIS either directly or indirectly, made substantial sales of securities of INTERSTATE STORES, INC., while knowing the material non-public information that the trade credit of INTERSTATE STORES, INC., had been cut-off.

21. Subsequent to December 1973, on information and belief, the Defendants knew that the proposed "merger" with MCCRORY CORP. on the part of INTERSTATE STORES, INC. was not going to take place by reason of the poor financial condition of the Defendant INTERSTATE STORES, INC. This information was not revealed to the public until considerably later but it was known to the Defendants herein.

22. In May 1973 the said INTERSTATE STORES, INC. commenced Bankruptcy Proceedings (73 B 614 et. seq.) in the United States District Court for the Southern District of New York. On information and belief, the Defendants

15. About December 1973 the trade credit of the Defendant INTERSTATE STORES, INC. which involved, on information and belief, all of the normal credit terms given by suppliers to customers upon delivery of merchandise, was cut off by all suppliers of the said INTERSTATE STORES, INC. so that this Defendant was put on a "C.O.D." basis by all of its suppliers. The Defendant SIEGEL in a statement made in open Court in connection with the Bankruptcy proceedings involving said Defendant INTERSTATE STORES, INC. stated that this firm had become "devoid of credit" prior to Christmas 1973.

16. The aforesaid loss of trade credit was known or should have been known to the Defendant S.D. LEIDESDOERF & CO. the accountants for the Defendant INTERSTATE STORES, INC. and said accountants further failed to file the required SEC 8-K report with respect to such event.

17. The aforesaid information is further material non-public information which, under the appropriate Securities Act provisions, is required to be promptly disclosed to the public since it would have a material adverse effect on the sale of the securities of INTERSTATE STORES, INC.

18. On information and belief, the said information was also known to the Defendant RIKLIS.

19. Since December 1973, on information and belief, the Defendants herein, in addition to their failure

herein knew as early as December 1973 that such Bankruptcy Proceedings would have to be commenced.

23. On information and belief, the said information adverse to the position of INTERSTATE STORES, INC. was communicated by the Defendants to various third parties who, in reliance upon said information, sold a considerable volume of Securities of the said INTERSTATE STORES, INC. which would not have been so sold and purchased by members of the General Public who had no knowledge of the said adverse information.

24. On information and belief, the results of said improper disclosure of adverse information has been in unjust enrichment of diverse persons and the severe loss to the Plaintiff SACKS and the Members of the Class that he represents.

25. In the alternative, since the Securities of the said INTERSTATE STORES, INC. are now worthless, the Class Members herein are entitled to a refund of the purchase price thereof as provided in the Securities Acts.

26. This action has been brought within three years of the date of the violations alleged and within one year of the discovery of such violations. These violations were discovered in the course of a Court Hearing before HON. JUDGE CANNELLA of the United States District Court

for the Southern District of New York on June 6, 1974.

27. This suit, being a Class Action, the following set forth the required Class Action Allegations:

1. The Class consists of the purchasers of the common stock of INTERSTATE STORES, INC. subsequent to the time that the said INTERSTATE STORES, INC. became "devoid of credit" in December 1973 and until the filing by the said INTERSTATE STORES, INC. of a Petition in Bankruptcy in May 1973. The Plaintiffs SACKS are Members of this Class.

2. The number of Members of this Class are not known with particularity but are believed to be in the neighborhood of Three Thousand individuals, firms, corporations and/or associations.

28. The Plaintiffs SACKS are competent to represent this Class. These Plaintiffs will engage to pay the cost of Class Notice.

29. The Class is too numerous to be joined in this action.

30. There are questions of law or fact common to the Class which include (a) The requirement on the part of the Defendants to file the appropriate 8-K SEC Report with respect to the Defendant INTERSTATE STORES, INC. being devoid of credit in December 1973. (b) The requirement that the

defendants, having knowledge of these facts, not to disclose the same to selected individuals etc. who made improper use thereof. (c) The requirement that the accountant LEIDESDORF promptly disclose the information involved.

31. A Class Suit is proper herein under Rules 23(b)(1)(B) and 23(b)(3) of the FRCP. This is so because (a) The prosecution of separate actions by individual members of the Class would create a risk of adjudications with respect to individual members of the Class which would, as a practical matter be dispositive of the interests of the other Class Members not parties to the adjudications or would substantially impair or impede their ability to protect their interests.  
(b) The questions of law and fact common to the members of the Class predominate over any questions affecting only individual members so that a Class Action is superior to other available remedies for the fair and efficient adjudication of the controversy. In this connection it is not believed that any other litigation has been brought with respect to the claims set forth herein, a Class Action is clearly manageable and, if notice is required to be given herein to Class Members, Plaintiffs agree to bear the cost of such notice.

COUNT TWO

32. Plaintiffs repeat and reallege the allegations

set forth in PARAGRAPHS "3", "4", "5", "6", "7", "8", "9", "10", "11", "12", "14", "15", "16", "17", "18", "19", "20", "21", "22", "23", "25" and "26" of the foregoing Complaint as though fully set forth at length herein.

33. Plaintiffs herein have purchased 4% CONVERTIBLE DEBENTURES OF INTERSTATE STORES, INC., subsequent to the cut-off of normal credit terms by suppliers of merchandise to the Defendant INTERSTATE STORES, INC. The details of such purchases and sales are, as follows:

NAME OF PLAINTIFF	DATE OF PURCHASE	PURCHASE PRICE	FACE VALUE OF BONDS
ROBERT G. MORRIS EMPLOYEES PENSION TRUST	May 23, 1974	\$512.50	\$10,000
ROBERT G. MORRIS EMPLOYEES PENSION TRUST	Dec. 11, 1973	\$625.00	\$5,000
ROBERT G. MORRIS EMPLOYEES PENSION TRUST	Dec. 11, 1973	\$693.75	\$5,000
BABETTE KENT	April 30, 1974	\$326.49	\$15,000
JEROME KENT and BABETTE KENT as joint tenants	April 30, 1974	\$17,342.78	\$135,000
JEROME KENT	April 30, 1974	\$5,926.92	\$50,000
MORRIS L. JANOVITZ	unknown at this time but subsequent to Dec. 1973	unknown	unknown

<u>NAME OF PLAINTIFF</u>	<u>DATE OF PURCHASE</u>	<u>PURCHASE PRICE</u>	<u>FACE VALUE OF BONDS</u>
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JEROME KENT	May 3, 1974	\$645.97	\$3,000
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JEROME KENT	May 6, 1974	\$1,508.89	\$7,000
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<u>NAME OF PLAINTIFF</u>	<u>DATE OF SALE</u>	<u>SALE PRICE</u>	<u>FACE VALUE OF BONDS</u>
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JEROME KENT and BABETTE KENT	May 24, 1974	\$6,123.58	\$135,000
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as joint  
tenants

BABETTE KENT	May 28, 1974	\$562.48	\$15,000
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MORRIS L. JANOVITZ	unknown at this time	Unknown at this time
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34. Plaintiff JEROME KENT was a purchaser of 4% CONVERTIBLE SUBORDINATED DEBENTURES OF INTERSTATE STORES, INC. subsequent to December 1973. Neither party would have purchased these debentures had the material non-public information relating to trade credit been known to them.

35. The securities involved in this action are the aforesaid 4% CONVERTIBLE SUBORDINATED DEBENTURES OF INTERSTATE STORES, INC. These are "Securities" as set forth in the Securities Acts of the United States.

36. On information and belief, the result of the aforesaid improper disclosure of adverse information has been

the unjust enrichment of diverse persons and the severe loss to the Plaintiff MORRIS and the Members of the Class that he represents.

37. This is a Class Action and the following are the required Class Action allegations:

1. The Class consists of the persons, firms, corporations and associations who purchased the aforesaid 4% CONVERTIBLE SUBORDINATED DEBENTURES OF INTERSTATE STORES, INC. from December 1973 until the Bankruptcy thereof in May 1973 without knowledge of the non-disclosure of material adverse information.

2. The Class is believed to consist of about One Thousand persons, firms, corporations and/or associations. The Plaintiff MORRIS is a Member of this Class.

38. The Plaintiffs MORRIS and KENT are competent to represent this Class. These Plaintiffs will engage to pay the cost of Class Notice if necessary.

39. There are questions of law and fact common to the Class which include (a) The fiduciary relationship between officers, directors and accountants to the General Public and to Convertible Debenture Holders.

COUNT THREE

40. Plaintiffs repeat and Reallege the allegations

set forth in PARAGRAPHS "1", "2", "3", "5", "6", "9", "10", "11", "12", "13", "14", "15", "16", "17", "18", "19", "20", "21", "22", "23", "24", "25", "26", "27", "28", "29", "30" and "31" of the foregoing Complaint as though fully set forth at length herein.

41. This Court acquires jurisdiction of this Count upon principles of "pendent jurisdiction" since this is a substantial and related claim to the claims for Securities Act violations.

42. This Court also obtains jurisdiction of this Count pursuant to the diversity of citizenship of the parties hereto.

43. The amount in controversy, exclusive of interest and costs, with respect to the Plaintiffs herein, exceeds the sum of TEN THOUSAND (\$10,000) DOLLARS.

44. This is a Count for common-law fraud and deceit in that the Defendants had knowledge of material facts, and failed to disclose these facts to the Plaintiffs and the Class that they represent. The Plaintiffs changed their position in reliance upon said non-disclosure and the Defendants had a duty to disclose said facts.

#### COUNT FOUR

45. Plaintiffs repeat and reallege the allegations

set forth in PARAGRAPHS "3", "5", "6", "7", "8", "9", "10",  
"11", "12", "14", "15", "16", "17", "18", "19", "20",  
"21", "22", "23", "25", "26", "33", "34", "35", "36", "37",  
"38", "39", "41", "42", "43" and "44" of the foregoing Complaint  
as though fully set forth at length herein.

WHEREFORE PLAINTIFFS DEMAND:

1. Damages against the Defendants, jointly and severally on Count ONE of the Complaint in the sum of TWENTY MILLION (\$20,000,000) DOLLARS with interest and the costs and disbursements of this action, in behalf of Plaintiffs and the Class that they represent.

2. Damages against the Defendants, jointly and severally, on Count TWO of the Complaint, on behalf of the Plaintiffs and the Class that they represent in the sum of FIFTEEN MILLION (\$15,000,000) DOLLARS together with interest and the costs and disbursements of this action,

3. Damages against the Defendants, jointly and severally, in behalf of Plaintiffs and the Classes that they represent, on Count THREE of the Complaint in the sum of THIRTY-FIVE MILLION (\$35,000,000) DOLLARS together with interest and the costs and disbursements of this action.

4. Damages against the Defendants, jointly and severally, in behalf of Plaintiffs and the Class that they

represent on Count FOUR of the Complaint in the sum of THIRTY-FIVE MILLION (\$35,000,000) DOLLARS together with interest and the costs and disbursements of this action.

5. Punitive damages against the Defendants in the sum of TWENTY MILLION (\$20,000,000) DOLLARS in behalf of the Plaintiffs and the Classes that they represent.

Dated: December 4, 1974

BADER and BADER  
Attorneys for Plaintiffs

By: I. Walton Bader  
I. Walton Bader  
274 Madison Avenue  
New York, N.Y. 10010  
Tel. (212) LE 2-6860.

AFFIRMATION OF SERVICE

STATE OF : NEW YORK )  
                            ) ss.  
COUNTY OF : NEW YORK )

I, WALTON BADER, a Member of the Bar of the State of New York, pursuant to CPLR, hereby states under penalties of perjury, that on December 4, 1974, I mailed a copy of the within AMENDED COMPLAINT to MESSRS. PROSKAUER, ROSE, ET AL., 300 Park Avenue, New York, N.Y. 10022; MESSRS. PARKER, CHAPIN and FLATTBU, 530 Fifth Avenue, New York, N.Y. and to MESSRS. RUBIN, WACHTEL, ET AL., 598 Madison Avenue, New York, N.Y.

Dated: December 4, 1974

I. Walton Bader  
I. Walton Bader

FILED  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT FOR N.Y.

\* FEB 8 1974 \*

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-TIME A.M.....

PM.....

: 74 Civil 880  
(Judge Bruchhausen)

SYLVIA SACKS and BENJAMIN M. SACKS,  
individually as joint tenants, DONALD W.  
HAGLE, individually and as representa-  
tives and Class Members of Stockholders of  
INTERSTATE STORES, INC. who purchased their  
shares subsequent to Christmas 1973,  
ROBERT G. MORRIS, individually, ROBERT G.  
MORRIS, MARIKAY MORRIS and J. BRECK.  
TOSTEVIN, as Trustees for ROBERT G. MORRIS  
DDS INC. EMPLOYEES PENSION TRUST, BABETTE  
KENT, individually, JEROME KENT and  
BABETTE KENT as joint tenants, JEROME  
KENT, individually, and MORRIS L. JANOVITZ,  
individually and as representatives and  
Class Members of Bondholders of INTER-  
STATE STORES, INC. who purchased their  
bonds subsequent to Christmas 1973, and  
in behalf of all other persons similarly  
situated and circumstanced,

NOTICE OF  
MOTION

Plaintiffs,

-against-

INTERSTATE STORES, INC., SOL W. CANTOR,  
S.D. LEIDESDORF & CO., a partnership,  
MERSHULAM RIKLIS, HERBERT B. SIEGEL,  
CHARLES P. LAZARIS, ALBERT PARKER, SAM J.  
ABEND, WALTER A. CRAIG, SAMUEL HAUSMAN,  
M. LESTER MENDELL, EDWARD C. SCHENKEL,  
HAROLD J. SZOLD, ROBERT C. VAN TUYL, and  
"JOHN DOE" and "RICHARD ROE", the named  
"JOHN DOE" and "RICHARD ROE" being  
fictitious, the parties intended being  
those individuals, firms, corporations and  
associations who obtained material non-  
public information to the effect that in  
Christmas 1973 the said INTERSTATE STORES,  
INC. was "devoid of credit" and who either  
utilized this information for its own  
account or transmitted it to third  
parties who utilized this information  
for their own account,

Defendants.

SIRS:

PLEASE TAKE NOTICE, that upon the amended complaint  
herein, the undersigned will move this Court before HONORABLE

WALTER BRUCHHAUSEN, a Judge of this Court in Court Room 3,  
United States Courthouse, Cadman Plaza East, Brooklyn, New York,  
on February 11, 1975 at 10:00 A.M. or as soon thereafter as  
counsel can be heard, for an order pursuant to Rules 12(b)(1)  
and 12(b)(6) of the Federal Rules of Civil Procedure (i) dis-  
missing the amended complaint herein by reason of its failure  
to meet the minimal pleading requirements of Rule 9(b) of the  
Federal Rules of Civil Procedure; (ii) dismissing the claims  
asserted under Sections 13 and 15 of the Securities Exchange  
Act of 1934 for failure to state a claim upon which relief  
can be granted; (iii) requiring plaintiffs to post a bond  
pursuant to Sections 9 and 18 of the Securities Exchange Act of  
1934; and (iv) such other and further relief as this Court may  
deem just and proper.

Dated: New York, New York  
January 31, 1975

PARKER, CHAPIN and FLATTAU

By Sol W. Canter

A member of the firm  
Attorneys of Defendant  
Sol W. Canter  
530 Fifth Avenue  
(212) 986-7200

TO: BADER AND BADER  
Attorneys for Plaintiffs  
274 Madison Avenue  
New York, New York

PROSKAUER, ROSE, GOETZ & MENDELSON  
Attorneys for Defendant  
S. D. Leidesdorf & Co.  
500 Park Avenue  
New York, New York 10022

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

FILED  
U.S. DISTRICT COURT  
NEW YORK

SYLVIA SACKS et. al.

JAN 16 1973

Plaintiffs

against

TIME A.M. ....  
Civil Action.....  
74 Civil 880

INTERSTATE STORES, INC. et. al.

Judge Bruchhausen

Defendants

AFFIDAVIT IN OPPOSITION TO MOTION  
TO DISMISS UNDER RULE 12

STATE OF NEW YORK

ss:

COUNTY OF NEW YORK

I, WALTON BADER, a member of the Bar of the State of New York, hereby states the following under penalties of perjury. This document has the force of an affidavit under the laws of the State of New York.

I am one of the attorneys for the plaintiffs herein and am fully familiar with the facts and circumstances of this action.

I make this affidavit in order to apprise the Court of the underlying facts on which this action is based.

It is axiomatic, of course, that on a Motion to Dismiss under Rule 12 FRCP all of the allegations of the Complaint are deemed to be true. However, in the event that this Court should feel that more detail is required than is set forth in the Complaint the plaintiffs respectfully requests leave to amend the Complaint to set forth the additional detail set forth herein.

In Christmas 1973 the trade credit of the defendant Interstate Stores, Inc. was cut off. (Paragraphs 15 and 16 of the

Amended Complaint, at that the defendant SIEGEL was Financial Vice-President of the defendant INTERSTATE STORES, INC. and the defendant CANTOR Chairman of the Board of Interstate Stores, Inc.

This fact, of course, was known to both the defendants SIEGEL and CANTOR (Siegel admitting this fact at a hearing at the United States District Court for the Southern District of New York before Judge Cannella).

In January 1974 the volume of sales of securities of Interstate Stores, Inc. was far in excess of the normal trading volume. Thus, obviously, the information involved herein was communicated to favored third parties. (This phase of the case, of course, has not yet been developed since discovery has not yet been had. It will be necessary to obtain from the New York Stock Exchange the complete transaction records in Interstate Stores, Inc. Securities for January 1974. It will then be necessary to discover who were the sellers of these securities. It will then be necessary to examine the sellers of these securities and determine their reasons for selling and the information that they had in their possession which induced them to sell.)

About the same time (i.e. about January 1973, paragraph 21 of the Complaint), defendants CANTOR and SIEGEL knew that a proposed merger of the defendant INTERSTATE and McCRORY CORP. (which merger had been hailed as the salvation of INTERSTATE) would not take place because of the poor financial condition of the said INTERSTATE. This information was also believed to be communicated to the sellers of Interstate securities in January 1974.

INTERSTATE, under the direction of the defendants CANTOR and SIEGEL did not reveal the cut-off of credit of INTERSTATE in any reports filed with the SEC nor did the defendant INTERSTATE file an 8-K report with the SEC as would be required with respect to such information. Plaintiffs in this action are Class Representa-

tives of the buyers of interstate securities during this period.

The Amended Complaint sets forth these facts in the form of "ultimate facts" as required by pleading rules. Thus the Complaint involved is completely sufficient and the Motion to Dismiss should be denied.

Dated : May 31st, 1975

  
T. Walton Bader

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

M' FILMED

-----  
SYLVIA SACKS, et al.,

:

Plaintiffs,

:

-against-

: No. 74 C 880

INTERSTATE STORES, INC., et al.,

: June 23, 1975

Defendants.

FILED  
U.S. DISTRICT COURT - N.Y.  
JUN 24 1975

-----  
MEMORANDUM

TIME AM .....  
P.M. ....

BRUCHHAUSEN, D. J.

The defendants, by notice of motion move for an order dismissing the amended complaint among other relief.

This is an alleged class action to recover substantial damages for alleged violations of the security laws, rules and regulations together with common law fraud and deceit.

The Court has considered the amended pleading and concludes that it utterly fails to comply with Rule 9(b) of the Federal Rules of Civil Procedure, which directs that in fraud cases, the circumstances of the fraud shall

be stated with particularity. The amended complaint alleges nothing more than sheer speculation that the actions of the defendants constituted violations of the security laws, rules and regulations. Such allegations do not suffice. It is apparent from a reading of the amended complaint that little investigation or research has been conducted prior to the filing of the pleadings.

The law in this circuit is crystal clear as to the particularity required in the pleadings in this type of action. See Segal v. Gordon, 467 F.2d 602(1972). That case leaves little to the imagination as to the strict requirements that must be followed in this type of suit.

The Court, after consideration of the memoranda, arguments, and applicable law, concludes that the motion of the defendants for dismissal of the amended complaint is in all respects granted.

Submit order on or before June 27, 1975.

Copies hereof will be forwarded to the attorneys for the parties.

George Bruchman  
Senior U. S. D. J.

Finterstle - Bader

STATE OF NEW YORK )  
: ss.  
COUNTY OF RICHMOND )

ROBERT BAILEY, being duly sworn, deposes and says, that defendant is not a party to the action, is over 18 years of age and resides at 236 Richmond Avenue, Staten Island, N.Y. 10302. That on the 23 day of Sept. 1975 defendant served the within Brief upon Proskauer Rose, Loeb + Mendelson.

attorneys(s) for Appellee

in this action, at

300 Park Ave.

NYC

the address(es) designated by said attorney(s) for that purpose by depositing 3 true copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

ROBERT BAILEY

Sworn to before me, this

23 day of Sept. 1975.  
William Bailey  
WILLIAM BAILEY  
Notary Public, State of New York  
No. 43-0132945  
Qualified in Richmond County  
Commission Expires March 30, 1976